

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
KING COUNTY RURAL LIBRARY  
DISTRICT and PETERSON  
BUILDING COMPANY, INC.,

Appellants,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 81-122

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of a \$250 civil penalty for an outdoor land clearing fire which occurred allegedly in violation of respondent's Regulation I, Section 8 came on for hearing before the Pollution Control Hearings Board on December 23, 1981, at Lacey, Washington. Both appellants and respondent elected a formal hearing pursuant to RCW 43.21B.230. Seated for and as the Board were Nat W. Washington, David Akana, and Gayle Rothrock (presiding).

Appellant appeared by its project manager, James H. Kuhn.

1 Respondent appeared by its attorney, Keith D. McGoffin. Reporter Kim  
2 Otis recorded the proceedings.

3 Witnesses were sworn and testified. Exhibits were examined. From  
4 the testimony heard and exhibits examined, the Pollution Control  
5 Hearings Board makes these

6 FINDINGS OF FACT

7 I

8 Respondent, pursuant to RCW 43.21B.260, has filed with this Board  
9 a certified copy of its Regulation 1 and amendments thereto, of which  
10 notice is taken.

11 II

12 In mid-July, 1981, appellant Peterson Building Company, Inc.,  
13 began work to develop a site at South 179th and Military Road in King  
14 County for co-appellant King County Rural Library District. The  
15 beginning exercise was land clearing, assembling of brush and debris  
16 for disposal, and the securing of a burning permit.

17 III

18 Appellant, Peterson Building Company, Inc., secured a 4-day  
19 burning permit from King County Fire District #24 on the strength they  
20 had ascertained from respondent agency that the population density was  
21 low enough to allow outdoor burning of land clearing debris in an  
22 urbanized area. Respondent agency Puget Sound Air Pollution Control  
23 Agency (PSAPCA) has no record of such an inquiry being made before or  
24 during the 4-day valid burning period. King County Rural Library  
25 District entrusted all land preparation and site construction to the  
26 co-appellant.

IV

On July 16, appellant Peterson Building Company, Inc., caused and allowed an outdoor land clearing fire at the subject site. King County Rural Library District had no knowledge of, or complicity in, this fire on their property.

V

The fire was defined by its setting in a 20-foot diameter area and characterized by several piles each about 5 feet high containing typical organic debris from a land clearing. One pile was actively involved in the late afternoon.

VI

Following up on a complaint from King County Fire District #24 about an outdoor fire in a well-populated urbanized area and their indication that a burning permit was issued in error, respondent agency's inspector arrived at the fire site at 3:55 p.m., and observed the dimensions and content of the fire, as were described above. No one was in attendance at the site for a period of 25 minutes, although a construction trailer was there. Respondent's inspector took three color photographs.

VII

Respondent's inspector mailed notices of violation to both the Peterson Building Company, Inc., and King County Rural Library District on July 17, 1981, for violations of Regulation I, Section 8.02(5) and Section 8.06(3); allowing a fire without an attendant and allowing a fire within an urbanized area with no population density verification, respectively. Respondent agency imposed a civil penalty

1 of \$250 in August, 1981, in connection with these violations. From  
2 this, appellants appeal.

3 VIII

4 The appellants have no prior record of any violation of  
5 respondent's regulations.

6 IX

7 Any Conclusion of Law which should be deemed a Finding of Fact is  
8 hereby adopted as such.

9 From these Findings the Board enters these

10 CONCLUSIONS OF LAW

11 I

12 The Board has jurisdiction over these persons and matters,  
13 RCW 43.218.

14 II

15 The legislature of the State of Washington has enacted the  
16 following policy on outdoor fires:

17 It is the policy of the state to achieve and maintain  
18 high levels of air quality and to this end to  
19 minimize to the greatest extent reasonably possible  
20 the burning of outdoor fires. Consistent with this  
policy, the legislature declares that such fires  
should be allowed only on a limited basis under  
strict regulation and close control. (RCW 70.94.740).

21 The respondent has adopted its Regulation I, Section 8 which  
22 provides in relevant part:

23 It shall be unlawful for any person to cause or allow  
24 any outdoor fire...in violation of any applicable  
law, rule or regulation of any governmental agency  
25 having jurisdiction over such fire. [8.02(5)]

26 . . . . .

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER

1 It shall be unlawful for any person to cause or allow  
2 any outdoor fire for land clearing burning...within  
3 the urbanized area as defined by the U.S. Bureau of  
4 the Census unless the Agency has verified that the  
5 average population density on the land within 0.6  
6 miles within the proposed burning site is 2,500  
7 persons per square mile or less. [8.06]

8 III

9 Appellant Peterson Building Company's failure to monitor the land  
10 clearing fire at all times, as required by its permit, violated  
11 respondent's Regulation I, Section 8.

12 IV

13 King County Fire District #24's issuance of the subject land  
14 clearing burning permit, without evidence that the population density  
15 had been found to be within the tolerance level for fires in urbanized  
16 areas, is an administrative error which impinges on the effectiveness  
17 of respondent's enforcement of its regulations. Although the  
18 regulation was violated, a civil penalty should not be based upon this  
19 infraction.

20 V

21 Appellant King County Rural Library District did not cause or  
22 allow an outdoor fire in this circumstance and should be absolved of  
23 responsibility for the subject violations and civil penalty.

24 VI

25 Because the violations committed by appellant Peterson Building  
26 Company, Inc., are their first against respondent's regulations part  
27 of the civil penalty should be mitigated by suspension.

VII

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The subject notices of violation and civil penalty are affirmed with regard to Peterson Building Company, Inc.; provided however, that \$150 of the civil penalty is suspended on condition appellant not violate respondent's regulations for a period of one year from the date of issuance of this Order. King County Rural Library District is stricken from the notices of violation and civil penalty in this matter.

DATED this 31st day of December, 1981.

POLLUTION CONTROL HEARINGS BOARD

  
NAT W. WASHINGTON, Chairman

  
GAYLE ROTHROCK, Vice Chairman

  
DAVID AKANA, Member

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER